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21 **ELECTRONICS FOR IMAGING, INC.**

22 UNITED STATES DISTRICT COURT
23 CENTRAL DISTRICT OF CALIFORNIA

24 DIGITECH IMAGE TECHNOLOGIES,
25 LLC,

26 Plaintiff,

27 v.

28 ELECTRONICS FOR IMAGING, INC.,

Defendant.

CASE NO. SA CV 12-01324-
ODW(MRWx)

**~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER**

Judge: Hon. Otis D. Wright, II

1 The parties to this Action, Plaintiff Digitech Image Technologies, LLC
2 ("Digitech") and Defendant Electronics For Imaging, Inc. ("EFI), have propounded,
3 or stated that they intend to propound, discovery seeking documents and/or
4 information from one or more parties and/or third parties that may contain
5 confidential technical and financial information that are contended to be relevant to
6 the patent infringement and damage claims and affirmative defenses at issue in this
7 Action. Public dissemination of such information and documents would likely harm
8 the disclosing party by making it available to competitors and potential customers.
9 Such information and documents are therefore subject to protection under Rule 26(c)
10 of the Federal Rules of Civil Procedure, and Digitech and EFI agree that good cause
11 exists to protect the confidential and proprietary nature of such information, which
12 may be contained in discovery responses, including but not limited to, documents,
13 interrogatory responses, responses to requests for admissions, responses to subpoenas
14 duces tecum, and deposition testimony in this Action, such that entry of this
15 Stipulated Protective Order ("Protective Order") is warranted to protect against
16 disclosure of such documents and information.
17

18 The parties' protective order is almost identical to the Standard Stipulated
19 Protective Order for Litigation Involving Patents in the Northern District of
20 California. The only changes to the Northern District's Standard Order are (1) to
21 conform it to the Local Rules of the Central District with respect to filing documents
22 under seal, and (2) there are relatively minor modifications to Sections 5.1 and 5.2,
23 which relate to how protected information is designated. A redline of this proposed
24 Order compared to the Northern District of California's Standard Order is being filed
25 by the parties herewith, should the Court desire to see the changes made by the
26 parties.
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PROTECTIVE ORDER

Based upon this Stipulation of Digitech and EFI, and good cause having been shown to the satisfaction of this Court, it is hereby ordered that the following procedures shall govern the production of all documents, testimony, discovery responses, and other information in the above-captioned action (the “Action”), including information produced by Digitech and EFI, any parties later joined in this Action (together, “parties”), and all third parties subject to discovery herein:

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. This Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. As set forth in Section 14.4, below, this Stipulated Protective Order does not entitle the parties to file confidential information under seal; L.R. 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

1 2.3 Counsel (without qualifier): Outside Counsel of Record and House
2 Counsel (as well as their support staff).

3 2.4 Designated House Counsel: House Counsel who seek access to
4 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this
5 matter.

6 2.5 Designating Party: a Party or Non-Party that designates information or
7 items that it produces in disclosures or in responses to discovery as
8 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
9 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”.

10 2.6 Disclosure or Discovery Material: all items or information, regardless of
11 the medium or manner in which it is generated, stored, or maintained (including,
12 among other things, testimony, transcripts, and tangible things), that are produced or
13 generated in disclosures or responses to discovery in this matter.

14 2.7 Expert: a person with specialized knowledge or experience in a matter
15 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve
16 as an expert witness or as a consultant in this action, (2) is not a past or current
17 employee of a Party or of a Party’s competitor, and (3) at the time of retention, is not
18 anticipated to become an employee of a Party or of a Party’s competitor.

19 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
20 Information or Items: extremely sensitive “Confidential Information or Items,”
21 disclosure of which to another Party or Non-Party would create a substantial risk of
22 serious harm that could not be avoided by less restrictive means.

23 2.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items:
24 extremely sensitive “Confidential Information or Items” representing computer code
25 and associated comments and revision histories, formulas, engineering specifications,
26 or schematics that define or otherwise describe in detail the algorithms or structure of
27 software or hardware designs, disclosure of which to another Party or Non-Party
28

1 would create a substantial risk of serious harm that could not be avoided by
2 less restrictive means.

3 2.10 House Counsel: attorneys who are employees of a party to this action.
4 House Counsel does not include Outside Counsel of Record or any other outside
5 counsel.

6 2.11 Non-Party: any natural person, partnership, corporation, association, or
7 other legal entity not named as a Party to this action.

8 2.12 Outside Counsel of Record: attorneys who are not employees of a party
9 to this action but are retained to represent or advise a party to this action and have
10 appeared in this action on behalf of that party or are affiliated with a law firm which
11 has appeared on behalf of that party.

12 2.13 Party: any party to this action, including all of its officers, directors,
13 employees, consultants, retained experts, and Outside Counsel of Record (and their
14 support staffs).

15 2.14 Producing Party: a Party or Non-Party that produces Disclosure or
16 Discovery Material in this action.

17 2.15 Professional Vendors: persons or entities that provide litigation support
18 services (e.g., photocopying, videotaping, translating, preparing exhibits or
19 demonstrations, and organizing, storing, or retrieving data in any form or medium)
20 and their employees and subcontractors.

21 2.16 Protected Material: any Disclosure or Discovery Material that is
22 designated as "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL –
23 ATTORNEYS' EYES ONLY" or as "HIGHLY CONFIDENTIAL – SOURCE
24 CODE."

25 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material
26 from a Producing Party.
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1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
5 compilations of Protected Material; and (3) any testimony, conversations, or
6 presentations by Parties or their Counsel that might reveal Protected Material.

7 However, the protections conferred by this Stipulation and Order do not cover the
8 following information: (a) any information that is in the public domain at the time of
9 disclosure to a Receiving Party or becomes part of the public domain after its
10 disclosure to a Receiving Party as a result of publication not involving a violation of
11 this Order, including

12 becoming part of the public record through trial or otherwise; and (b) any information
13 known to the Receiving Party prior to the disclosure or obtained by the Receiving
14 Party after the disclosure from a source who obtained the information lawfully and
15 under no obligation of confidentiality to the Designating Party. Any use of Protected
16 Material at trial shall be governed by a separate agreement or order.

17 4. DURATION

18 Even after final disposition of this litigation, the confidentiality obligations
19 imposed by this Order shall remain in effect until a Designating Party agrees
20 otherwise in writing or a court order otherwise directs. Final disposition shall be
21 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
22 or without prejudice; and (2) final judgment herein after the completion and
23 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
24 including the time limits for filing any motions or applications for extension of time
25 pursuant to applicable law.
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1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection.

3 Each Party or Non-Party that designates information or items for protection under this
4 Order must take care to limit any such designation to specific material that qualifies
5 under the appropriate standards.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations
7 that are shown to be clearly unjustified or that have been made for an improper
8 purpose (e.g., to unnecessarily encumber or retard the case development process or to
9 impose unnecessary expenses and burdens on other parties) expose the Designating
10 Party to sanctions.

11 If it comes to a Designating Party's attention that information or items that it
12 designated for protection do not qualify for protection at all or do not qualify for the
13 level of protection initially asserted, that Designating Party must promptly notify all
14 other parties that it is withdrawing the mistaken designation.

15 5.2 Manner and Timing of Designations. Except as otherwise provided in
16 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
17 stipulated or ordered, Disclosure or Discovery

18 Material that qualifies for protection under this Order must be clearly so
19 designated before the material is disclosed or produced.

20 Designation in conformity with this Order requires:

21 (a) for information in documentary form (e.g., paper or electronic
22 documents, but excluding transcripts of depositions or other pretrial or trial
23 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
24 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY
25 CONFIDENTIAL – SOURCE CODE" to each page that contains protected material.

26 A Party or Non-Party that makes original documents or materials available for
27 inspection need not designate them for protection until after the inspecting Party has
28

1 indicated which material it would like copied and produced. During the inspection and
2 before the designation, all of the material made available for inspection shall be
3 deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the
4 inspecting Party has identified the documents it wants copied and produced, the
5 Producing Party must determine which documents, or portions thereof, qualify for
6 protection under this Order. Then, before producing the specified documents, the
7 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
8 CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL
9 – SOURCE CODE) to each page that contains Protected Material.

10
11 (b) for testimony given in deposition or in other pretrial or trial
12 proceedings, that the Designating Party identify within 21 days after the close of the
13 deposition, hearing, or other proceeding, all protected testimony and specify the level
14 of protection being asserted. Only those portions of the testimony that are
15 appropriately designated for protection within the 21 days shall be covered by the
16 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may
17 specify, at the deposition or up to 21 days afterwards if that period is properly
18 invoked, that the entire transcript shall be treated as "CONFIDENTIAL" or
19 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

20 Parties shall give the other parties notice if they reasonably expect a
21 deposition, hearing or other proceeding to include Protected Material so that the other
22 parties can ensure that only authorized individuals who have signed the
23 "Acknowledgment and Agreement to Be Bound" (Exhibit A) are present at those
24 proceedings. The use of a document as an exhibit at a deposition shall not in any way
25 affect its designation as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
26 ATTORNEYS' EYES ONLY."

27 Transcripts containing Protected Material shall have an obvious legend
28 on the title page that the transcript contains Protected Material, and the title page shall

1 be followed by a list of all pages (including line numbers as appropriate) that have
 2 been designated as Protected Material and the level of protection being asserted by the
 3 Designating Party. The Designating Party shall inform the court reporter of these
 4 requirements. Any transcript that is prepared before the expiration of a 21-day period
 5 for designation shall be treated during that period as if it had been designated
 6 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" in its entirety unless
 7 otherwise agreed. After the expiration of that period, the transcript shall be treated
 8 only as actually designated.

9 (c) for information produced in some form other than documentary and
 10 for any other tangible items, that the Producing Party affix in a prominent place on the
 11 exterior of the container or containers in which the information or item is stored the
 12 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
 13 ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE". If only a portion or
 14 portions of the information or item warrant protection, the Producing Party, to the
 15 extent practicable, shall identify the protected portion(s) and specify the level of
 16 protection being asserted.
 17

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 19 failure to designate qualified information or items does not, standing alone, waive the
 20 Designating Party's right to secure protection under this Order for such material.
 21 Upon timely correction of a designation, the Receiving Party must make reasonable
 22 efforts to assure that the material is treated in accordance with the provisions of this
 23 Order.

24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 26 designation of confidentiality at any time. Unless a prompt challenge to a Designating
 27 Party's confidentiality designation is necessary to avoid foreseeable, substantial
 28 unfairness, unnecessary economic burdens, or a significant disruption or delay of the

1 litigation, a Party does not waive its right to challenge a confidentiality designation by
2 electing not to mount a challenge promptly after the original designation is disclosed.

3 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
4 resolution process by providing written notice of each designation it is challenging
5 and describing the basis for each challenge. To avoid ambiguity as to whether a
6 challenge has been made, the written notice must recite that the challenge to
7 confidentiality is being made in accordance with this specific paragraph of the
8 Protective Order. The parties shall attempt to resolve each challenge in good faith and
9 must begin the process by conferring directly (in voice to voice dialogue; other forms
10 of communication are not sufficient) within 14 days of the date of service of notice. In
11 conferring, the Challenging Party must explain the basis for its belief that the
12 confidentiality designation was not proper and must give the Designating Party an
13 opportunity to review the designated material, to reconsider the circumstances, and, if
14 no change in designation is offered, to explain the basis for the chosen designation. A
15 Challenging Party may proceed to the next stage of the challenge process only if it has
16 engaged in this meet and confer process first or establishes that the Designating Party
17 is unwilling to participate in the meet and confer process in a timely manner.

18 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
19 court intervention, the Designating Party shall file and serve a motion to retain
20 confidentiality under L.R. 7 (and in compliance with L.R. 79-5, if applicable) within
21 21 days of the initial notice of challenge or within 14 days of the parties agreeing that
22 the meet and confer process will not resolve their dispute, whichever is earlier. Each
23 such motion must be accompanied by a competent declaration affirming that the
24 movant has complied with the meet and confer requirements imposed in the preceding
25 paragraph. Failure by the Designating Party to make such a motion including the
26 required declaration within 21 days (or 14 days, if applicable) shall automatically
27 waive the confidentiality designation for each challenged designation. In addition, the
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1 Challenging Party may file a motion challenging a confidentiality designation at any
 2 time if there is good cause for doing so, including a challenge to the designation of a
 3 deposition transcript or any portions thereof. Any motion brought pursuant to this
 4 provision must be accompanied by a competent declaration affirming that the movant
 5 has complied with the meet and confer requirements imposed by the preceding
 6 paragraph.

7 The burden of persuasion in any such challenge proceeding shall be on the
 8 Designating Party. Frivolous challenges and those made for an improper purpose
 9 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
 10 expose the Challenging Party to sanctions. Unless the Designating Party has waived
 11 the confidentiality designation by failing to file a motion to retain confidentiality as
 12 described above, all parties shall continue to afford the material in question the level
 13 of protection to which it is entitled under the Producing Party's designation until the
 14 court rules on the challenge.
 15

16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

17 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 18 disclosed or produced by another Party or by a Non-Party in connection with this case
 19 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
 20 Material may be disclosed only to the categories of persons and under the conditions
 21 described in this Order. When the litigation has been terminated, a Receiving Party
 22 must comply with the provisions of section 15 below (FINAL DISPOSITION).

23 Protected Material must be stored and maintained by a Receiving Party at a
 24 location and in a secure manner¹ that ensures that access is limited to the persons
 25 authorized under this Order.

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless

27
 28 ¹ It may be appropriate under certain circumstances to require the Receiving Party to store any electronic Protected Material in password-protected form.

1 otherwise ordered by the court or permitted in writing by the Designating Party, a
 2 Receiving Party may disclose any information or item designated "CONFIDENTIAL"
 3 only to:

4 (a) the Receiving Party's Outside Counsel of Record in this action, as
 5 well as employees of said Outside Counsel of Record to whom it is reasonably
 6 necessary to disclose the information for this litigation and who have signed the
 7 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

8 (b) the officers, directors, and employees (including House Counsel) of
 9 the Receiving Party to whom disclosure is reasonably necessary for this litigation and
 10 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

11 (c) Experts (as defined in this Order) of the Receiving Party to whom
 12 disclosure is reasonably necessary for this litigation and who have signed the
 13 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

14 (d) the court and its personnel;

15 (e) court reporters and their staff, professional jury or trial consultants,
 16 and Professional Vendors to whom disclosure is reasonably necessary for this
 17 litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
 18 (Exhibit A);

19 (f) during their depositions, witnesses in the action to whom disclosure is
 20 reasonably necessary and who have signed the "Acknowledgment and Agreement to
 21 Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered
 22 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
 23 reveal Protected Material must be separately bound by the court reporter and may not
 24 be disclosed to anyone except as permitted under this Stipulated Protective Order.

25 (g) the author or recipient of a document containing the information or a
 26 custodian or other person who otherwise possessed or knew the information.

27 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES"

1 ONLY” and “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items.
 2 Unless otherwise ordered by the court or permitted in writing by the Designating
 3 Party, a Receiving Party may disclose any information or item designated “HIGHLY
 4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
 5 – SOURCE CODE”] only to:

6 (a) the Receiving Party’s Outside Counsel of Record in this action, as
 7 well as employees of said Outside Counsel of Record to whom it is reasonably
 8 necessary to disclose the information for this litigation and who have signed the
 9 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;
 10

11 (b) Designated House Counsel of the Receiving Party² (1) who has no
 12 involvement in competitive decision-making, (2) to whom disclosure is reasonably
 13 necessary for this litigation, (3) who has signed the “Acknowledgment and Agreement
 14 to Be Bound” (Exhibit A), and (4) as to whom the procedures set forth in paragraph
 15 7.4(a)(1), below, have been followed;³

16 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably
 17 necessary for this litigation, (2) who have signed the “Acknowledgment and
 18 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in
 19 paragraph 7.4(a)(2), below, have been followed;

20 (d) the court and its personnel;

21 (e) court reporters and their staff, professional jury or trial consultants,⁴
 22 and Professional Vendors to whom disclosure is reasonably necessary for this
 23

24 ² It may be appropriate under certain circumstances to limit the number of Designated House Counsel who may access “HIGHLY
 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information under this provision.

25 ³ This Order contemplates that Designated House Counsel shall not have access to any information or items designated “HIGHLY
 CONFIDENTIAL – SOURCE CODE.” It may also be appropriate under certain circumstances to limit how Designated House
 26 Counsel may access “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information. For example, Designated House
 Counsel may be limited to viewing “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information only if it is filed with
 27 the court under seal, or in the presence of Outside Counsel of Record at their offices.

28 ⁴ To the extent that one or more of the parties wish to allow disclosure of information not only to professional jury or trial
 consultants, but also to mock jurors, to further trial preparation, the parties shall endeavor to draft a simplified, precisely tailored
 Undertaking for mock jurors to sign.

1 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
 2 (Exhibit A); and

3 (f) the author or recipient of a document containing the information or a
 4 custodian or other person who otherwise possessed or knew the information.

5 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
 6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
 7 – SOURCE CODE”] Information or Items to Designated House Counsel or Experts.

8 (a)(1) Unless otherwise ordered by the court or agreed to in writing by
 9 the Designating Party, a Party that seeks to disclose to Designated House Counsel any
 10 information or item that has been designated “HIGHLY CONFIDENTIAL –
 11 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a written
 12 request to the Designating Party that (1) sets forth the full name of the Designated
 13 House Counsel and the city and state of his or her residence, and (2) describes the
 14 Designated House Counsel’s current and reasonably foreseeable future primary job
 15 duties and responsibilities in sufficient detail to determine if House Counsel is
 16 involved, or may become involved, in any competitive decision-making.⁵

17 (a)(2) Unless otherwise ordered by the court or agreed to in writing by
 18 the Designating Party, a Party that seeks to disclose to an Expert (as defined in this
 19 Order) any information or item that has been designated “HIGHLY CONFIDENTIAL
 20 – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
 21 CODE”] pursuant to paragraph 7.3(c) first must make a written request to the
 22 Designating Party that (1) identifies the general categories of “HIGHLY
 23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
 24 – SOURCE CODE” information that the Receiving Party seeks permission to disclose
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 27 ⁵ It may be appropriate in certain circumstances to require any Designated House Counsel who receives “HIGHLY CONFIDENTIAL
 28 – ATTORNEYS’ EYES ONLY” information pursuant to this Order to disclose any relevant changes in job duties or responsibilities
 prior to final disposition of the litigation to allow the Designating Party to evaluate any later-arising competitive decision-making
 responsibilities.

1 to the Expert, (2) sets forth the full name of the Expert and the city and state of his or
 2 her primary residence, (3) attaches a copy of the Expert's current resume, (4)
 3 identifies the Expert's current employer(s), (5) identifies each person or entity from
 4 whom the Expert has received compensation or funding for work in his or her areas of
 5 expertise or to whom the expert has provided professional services, including in
 6 connection with a litigation, at any time during the preceding five years,⁶ and (6)
 7 identifies (by name and number of the case, filing date, and location of court) any
 8 litigation in connection with which the Expert has offered expert testimony, including
 9 through a declaration, report, or testimony at a deposition or trial, during the
 10 preceding five years.⁷

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 12 (b) A Party that makes a request and provides the information specified
 13 in the preceding respective paragraphs may disclose the subject Protected Material to
 14 the identified Designated House Counsel or Expert unless, within 14 days of
 15 delivering the request, the Party receives a written objection from the Designating
 16 Party. Any such objection must set forth in detail the grounds on which it is based.

17 (c) A Party that receives a timely written objection must meet and confer
 18 with the Designating Party (through direct voice to voice dialogue) to try to resolve
 19 the matter by agreement within seven days of the written objection. If no agreement is
 20 reached, the Party seeking to make the disclosure to Designated House Counsel or the
 21 Expert may file a motion as provided in L.R. 7 (and in compliance with L.R. 79-5, if
 22 applicable) seeking permission from the court to do so. Any such motion must
 23 describe the circumstances with specificity, set forth in detail the reasons why the
 24 disclosure to Designated House Counsel or the Expert is reasonably necessary, assess
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26 ⁶ If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should provide
 27 whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party seeking to
 disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

28 ⁷ It may be appropriate in certain circumstances to restrict the Expert from undertaking certain limited work prior to the termination of
 the litigation that could foreseeably result in an improper use of the Designating Party's "HIGHLY CONFIDENTIAL –
 ATTORNEYS' EYES ONLY" information.

1 the risk of harm that the disclosure would entail, and suggest any additional means
 2 that could be used to reduce that risk. In addition, any such motion must be
 3 accompanied by a competent declaration describing the parties' efforts to resolve the
 4 matter by agreement (i.e., the extent and the content of the meet and confer
 5 discussions) and setting forth the reasons advanced by the Designating Party for its
 6 refusal to approve the disclosure.

7 In any such proceeding, the Party opposing disclosure to Designated House
 8 Counsel or the Expert shall bear the burden of proving that the risk of harm that the
 9 disclosure would entail (under the safeguards proposed) outweighs the Receiving
 10 Party's need to disclose the Protected Material to its Designated House Counsel or
 11 Expert.

12 8. PROSECUTION BAR

13 Absent written consent from the Producing Party, any individual who receives
 14 access to another party's "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
 15 ONLY" technical information or "HIGHLY CONFIDENTIAL – SOURCE CODE"
 16 information shall not be involved in the prosecution of patents or patent applications
 17 relating to digital imaging technology, including without limitation the patents
 18 asserted in this action and any patent or application claiming priority to or otherwise
 19 related to the patents asserted in this action, before any foreign or domestic agency,
 20 including the United States Patent and Trademark Office ("the Patent Office").⁸ For
 21 purposes of this paragraph, "prosecution" includes directly or indirectly drafting,
 22 amending, advising, or otherwise affecting the scope or maintenance of patent
 23 claims.⁹ To avoid any doubt, "prosecution" as used in this paragraph does not include
 24 representing a party challenging a patent before a domestic or foreign agency
 25

26
 27 ⁸ It may be appropriate under certain circumstances to require Outside and House Counsel who receive access to "HIGHLY
 28 CONFIDENTIAL – ATTORNEYS' EYES ONLY" information to implement an "Ethical Wall."

⁹ Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

(including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes* reexamination). This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” technical information or “HIGHLY CONFIDENTIAL – SOURCE CODE” information is first received by the affected individual and shall end two (2) years after final termination of this action.

9. SOURCE CODE

(a) To the extent production of source code becomes necessary in this case, a Producing Party may designate source code as “HIGHLY CONFIDENTIAL - SOURCE CODE” if it comprises or includes confidential, proprietary or trade secret source code.

(b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information including the Prosecution Bar set forth in Paragraph 8, and may be disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be disclosed, as set forth in Paragraphs 7.3 and 7.4, with the exception of Designated House Counsel.¹⁰

(c) Any source code produced in discovery shall be made available for inspection, in a format allowing it to be reasonably reviewed and searched, during normal business hours or at other mutually agreeable times, at an office of the Producing Party’s counsel or another mutually agreed upon location. The source code shall be made available for inspection on a secured computer in a secured room without Internet access or network access to other computers, and the Receiving Party shall not copy, remove, or otherwise transfer any portion of the source code onto any recordable media or recordable device. The Producing Party may visually monitor the

¹⁰ It may be appropriate under certain circumstances to allow House Counsel access to derivative materials including “HIGHLY CONFIDENTIAL - SOURCE CODE” information, such as exhibits to motions or expert reports,

1 activities of the Receiving Party's representatives during any source code review, but
 2 only to ensure that there is no unauthorized recording, copying, or transmission of the
 3 source code.¹¹

4 (d) The Receiving Party may request paper copies of limited portions
 5 of source code that are reasonably necessary for the preparation of court filings,
 6 pleadings, expert reports, or other papers, or for deposition or trial, but shall not
 7 request paper copies for the purposes of reviewing the source code other than
 8 electronically as set forth in paragraph (c) in the first instance. The Producing Party
 9 shall provide all such source code in paper form including bates numbers and the label
 10 "HIGHLY CONFIDENTIAL - SOURCE CODE." The Producing Party may
 11 challenge the amount of source code requested in hard copy form pursuant to the
 12 dispute resolution procedure and timeframes set forth in Paragraph 6 whereby the
 13 Producing Party is the "Challenging Party" and the Receiving Party is the
 14 "Designating Party" for purposes of dispute resolution.
 15

16 (e) The Receiving Party shall maintain a record of any individual who
 17 has inspected any portion of the source code in electronic or paper form. The
 18 Receiving Party shall maintain all paper copies of any printed portions of the source
 19 code in a secured, locked area. The Receiving Party shall not create any electronic or
 20 other images of the paper copies and shall not convert any of the information
 21 contained in the paper copies into any electronic format. The Receiving Party shall
 22 only make additional paper copies if such additional copies are (1) necessary to
 23 prepare court filings, pleadings, or other papers (including a testifying expert's expert
 24 report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of
 25 its case. Any paper copies used during a deposition shall be retrieved by the
 26

27
 28 ¹¹ It may be appropriate under certain circumstances to require the Receiving Party to keep a paper log indicating the names of any individuals inspecting the source code and dates and times of inspection, and the names of any individuals to whom paper copies of portions of source code are provided.

1 Producing Party at the end of each day and must not be given to or left with a court
2 reporter or any other individual.¹²

3 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
4 OTHER LITIGATION

5 If a Party is served with a subpoena or a court order issued in other
6 litigation that compels disclosure of any information or items designated in this action
7 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
8 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” that Party must:

9 (a) promptly notify in writing the Designating Party. Such notification
10 shall include a copy of the subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or
12 order to issue in the other litigation that some or all of the material covered by the
13 subpoena or order is subject to this Protective Order. Such notification shall include a
14 copy of this Stipulated Protective Order; and

15 (c) cooperate with respect to all reasonable procedures sought to be
16 pursued by the Designating Party whose Protected Material may be affected.¹³

17 If the Designating Party timely seeks a protective order, the Party served
18 with the subpoena or court order shall not produce any information designated in this
19 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
20 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” before a
21 determination by the court from which the subpoena or order issued, unless the Party
22 has obtained the Designating Party’s permission. The Designating Party shall bear the
23 burden and expense of seeking protection in that court of its confidential material –
24

25
26 ¹² The nature of the source code at issue in a particular case may warrant additional protections or restrictions. For example, it may be
27 appropriate under certain circumstances to require the Receiving Party to provide notice to the Producing Party before including
28 “HIGHLY CONFIDENTIAL – SOURCE CODE” information in a court filing, pleading, or expert report.

¹³ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the
Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or
order issued.

1 and nothing in these provisions should be construed as authorizing or encouraging a
 2 Receiving Party in this action to disobey a lawful directive from another court.

3 11. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
 4 PRODUCED IN THIS LITIGATION

5 (a) The terms of this Order are applicable to information produced by
 6 a Non-Party in this action and designated as "CONFIDENTIAL" or "HIGHLY
 7 CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL
 8 – SOURCE CODE". Such information produced by Non-Parties in connection with
 9 this litigation is protected by the remedies and relief provided by this Order. Nothing
 10 in these provisions should be construed as prohibiting a Non-Party from seeking
 11 additional protections.

12 (b) In the event that a Party is required, by a valid discovery request,
 13 to produce a Non-Party's confidential information in its possession, and the Party is
 14 subject to an agreement with the Non-Party not to produce the Non-Party's
 15 confidential information, then the Party shall:

16 1. promptly notify in writing the Requesting Party and the Non-Party
 17 that some or all of the information requested is subject to a confidentiality agreement
 18 with a Non-Party;

19 2. promptly provide the Non-Party with a copy of the Stipulated
 20 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
 21 specific description of the information requested; and

22 3. make the information requested available for inspection by the
 23 Non-Party.

24 (c) If the Non-Party fails to object or seek a protective order from this
 25 court within 14 days of receiving the notice and accompanying information, the
 26 Receiving Party may produce the Non-Party's confidential information responsive to
 27 the discovery request. If the Non-Party timely seeks a protective order, the Receiving
 28

1 Party shall not produce any information in its possession or control that is subject to
 2 the confidentiality agreement with the Non-Party before a determination by the
 3 court.¹⁴ Absent a court order to the contrary, the Non-Party shall bear the burden and
 4 expense of seeking protection in this court of its Protected Material.

5 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

6 If a Receiving Party learns that, by inadvertence or otherwise, it has
 7 disclosed Protected Material to any person or in any circumstance not authorized
 8 under this Stipulated Protective Order, the Receiving Party must immediately (a)
 9 notify in writing the Designating Party of the unauthorized disclosures, (b) use its best
 10 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
 11 person or persons to whom unauthorized disclosures were made of all the terms of
 12 this Order, and (d) request such person or persons to execute the "Acknowledgment
 13 and Agreement to Be Bound" that is attached hereto as Exhibit A.
 14

15 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE 16 PROTECTED MATERIAL

17 When a Producing Party gives notice to Receiving Parties that certain
 18 inadvertently produced material is subject to a claim of privilege or other protection,
 19 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
 20 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
 21 may be established in an e-discovery order that provides for production without prior
 22 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
 23 parties reach an agreement on the effect of disclosure of a communication or
 24 information covered by the attorney-client privilege or work product protection, the
 25 parties may incorporate their agreement in the stipulated protective order submitted to
 26 the court.
 27

28 ¹⁴ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 14. MISCELLANEOUS

2 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
3 person to seek its modification by the court in the future.

4 14.2 Right to Assert Other Objections. By stipulating to the entry of this
5 Protective Order no Party waives any right it otherwise would have to object to
6 disclosing or producing any information or item on any ground not addressed in this
7 Stipulated Protective Order. Similarly, no Party waives any right to object on any
8 ground to use in evidence of any of the material covered by this Protective Order.

9 Export Control. Disclosure of Protected Material shall be subject to all
10 applicable laws and regulations relating to the export of technical data contained in
11 such Protected Material, including the release of such technical data to foreign
12 persons or nationals in the United States or elsewhere. The Producing Party shall be
13 responsible for identifying any such controlled technical data, and the Receiving Party
14 shall take measures necessary to ensure compliance.

15 14.4 Filing Protected Material. The parties shall comply with the Local Rules
16 of the U.S. District Court for the Central District of California, without limitation L.R.
17 79-5, when filing protected material or submitted protected material for en camera
18 review.

19 15. FINAL DISPOSITION

20 Within 60 days after the final disposition of this action, as defined in
21 paragraph 4, each Receiving Party must return all Protected Material to the Producing
22 Party or destroy such material. As used in this subdivision, "all Protected Material"
23 includes all copies, abstracts, compilations, summaries, and any other format
24 reproducing or capturing any of the Protected Material. Whether the Protected
25 Material is returned or destroyed, the Receiving Party must submit a written
26 certification to the Producing Party (and, if not the same person or entity, to the
27 Designating Party) by the 60-day deadline that (1) identifies (by category, where
28

1 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
2 that the Receiving Party has not retained any copies, abstracts, compilations,
3 summaries or any other format reproducing or capturing any of the Protected
4 Material. Notwithstanding this provision, Counsel are entitled to retain an archival
5 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
6 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
7 work product, and consultant and expert work product, even if such materials contain
8 Protected Material. Any such archival copies that contain or constitute Protected
9 Material remain subject to this Protective Order as set forth in Section 4
10 (DURATION).
11

12 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
13

14 DATED: December 31, 2012

/s/ John J. Edmonds

15 COLLINS EDMONDS POGORZELSKI
16 SCHLATHER & TOWER, PLLC

17 Attorneys for Plaintiff
18 DIGITECH IMAGE TECHNOLOGIES, LLC
19

20 DATED: December 31, 2012

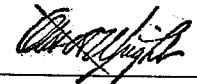
/s/ Frank P. Coté

21 Frank P. Coté
22 JONES DAY

23 Attorneys for Defendant
24 ELECTRONICS FOR IMAGING, INC.

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.
2

3 DATED: 1-3-13


4 Hon. Otis D. Wright, II
5 United States District Judge
6
7